

and conduct injunction proceedings under section 4109(d) of the Foreign Service Statute only upon approval of the Board.

C. Representation cases. The General Counsel is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to sections 4111 and 4118(c) of the Foreign Service Statute. The General Counsel is also authorized and has responsibility to supervise or conduct elections pursuant to section 4111 of the Foreign Service Statute and to enter into consent election agreements in accordance with section 4111(g) of the Foreign Service Statute.

The authority and responsibility of the General Counsel in representation cases shall extend, in accordance with the rules and regulations of the Board and the General Counsel, to all phases of the investigation through the conclusion of the hearing (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearings are reserved by the Board to itself. In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters, except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with its procedural requirements. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of the Board-directed election under the provisions of section 4111 of the Foreign Service Statute, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board and the General Counsel.

Appeals from the refusal of the General Counsel to issue a notice of hearing, from the conclusions contained in a report and findings issued by the General Counsel, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with its procedural requirements.

In processing election petitions filed pursuant to section 4111 of the Foreign Service Statute and petitions filed pursuant to section 4118(c) of the Foreign Service Statute, the General Counsel is authorized to conduct an appropriate investigation as to the authenticity of the prescribed showing of interest and, upon making a determination to proceed, where appropriate, to supervise or conduct a secret ballot election or certify the validity of a petition for determination of eligibility for dues allotment. After an election, if there are no challenges or objections which require a hearing by the Board, the General Counsel shall certify the results thereof, with appropriate copies lodged in the Washington, DC, files of the Board.

II. Liaison with other governmental agencies. The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 4117 of the Foreign Service Statute and the availability to the Board and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Foreign Service Grievance Board with respect to functions which may be performed by the Foreign Service Grievance Board.

III. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

[46 FR 45882, Sept. 15, 1981]

CHAPTER XV—AFRICAN DEVELOPMENT FOUNDATION

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PART 1500—SUNSHINE REGULATIONS

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1500.9 Transcripts, recording of closed meetings.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 48 FR 55842, Dec. 16, 1983, unless otherwise noted.

§ 1500.1 Purpose and scope.

The purpose of this part is to effectuate the provisions of the Government in the Sunshine Act. These procedures apply to meetings of the Board of Directors of the African Development Foundation.

§ 1500.2 Policy.

It is the policy of the African Development Foundation to provide the public with the fullest practical information regarding its decision-making process, while protecting the rights of individuals and the ability of the Foundation to carry out its responsibilities.

§ 1500.3 Definitions.

As used in this part:

Board or Board of Directors means the collegial body that conducts the business of the African Development Foundation as specified in title V, section 507 of the International Security and Development Cooperation Act of 1980, Pub. L. 96-533 (22 U.S.C. 290 h-5).

Meeting means the deliberations of a quorum of the Directors of the Foundation required to take action on behalf of the Foundation where such deliberations determine or result in the joint conduct or disposition of official Foundation business, but does not apply to deliberations to take action to open or close a meeting. (See §1500.5.)

Member means an individual who belongs to the ADF Board of Directors.

Public Observation means attendance at any meeting but does not include

participation, or attempted participation, in such meeting in any manner.

§ 1500.4 Open meetings.

(a) Members shall not jointly conduct or dispose of Foundation business other than in accordance with these procedures. Every portion of every meeting of the Board of Directors shall be open to public observation, subject to the exceptions provided in §1500.5.

(b) The Secretary of the Foundation shall be responsible for assuring that ample space, sufficient visibility, and adequate acoustics are provided for public observation of meetings of the Board of Directors.

§ 1500.5 Grounds on which meetings may be closed.

(a) The Foundation shall open every portion of every meeting of the Foundation for public observation, except where the Foundation determines that such portion or portions of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such executive order;

(2) Relate solely to the internal personnel rules and practice of the Foundation;

(3) Disclose matters specifically exempted from disclosure by statute, provided that such statute:

(i) Requires that the matters be withheld from the public in such manner as to leave no discretion on the issue, or

(ii) Has established practical criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information which has been obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes,

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or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. This shall not apply in any instance where the Foundation has already disclosed to the public the content or nature of its proposed action or where the Foundation is required by law to make such disclosure on its own initiative prior to taking final Foundation action on such proposal;

(9) Specifically concern the Foundation's issuance of a subpoena; the Foundation's participation in a civil action or proceeding, or an arbitration; or an action in a foreign court or international tribunal; or the initiation, conduct, or disposition by the Foundation of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5 of the United States Code, or otherwise involving a determination on the record after an opportunity for a hearing.

(b) Meetings of the Board of Directors shall not be closed pursuant to paragraph (a) of this section when the Foundation finds that the public interest requires that they be open.

§ 1500.6 Procedure for announcing meetings.

(a) In the case of each meeting of the Board of Directors, the Foundation

shall make public, at least one week before the meeting, the following information:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and telephone number of the person designated by the Board to respond to requests for information about the meeting.

(b) The period of one week for the public announcement required by paragraph (a) of this section may be reduced if a majority of the Board of Directors of the Foundation determines by a recorded vote that the Foundation requires that such a meeting be called at an earlier date, in which case the Foundation shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) Immediately following the public announcement, the Foundation shall publish the announcement in the FEDERAL REGISTER.

(d) The *earliest practicable time*, as used in this subsection, means as soon as possible, which should not be later than the commencement of the meeting or portion in question.

(e) The Secretary of the Foundation shall use reasonable means to assure that the public is fully informed by the public announcements required by this section. Such public announcements may be made by posting notices in the public areas of the Foundation's headquarters and mailing notices to the persons on a list maintained for those who want to receive such announcements.

§ 1500.7 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 1500.5, shall be taken only when:

(1) A majority of the membership of the Foundation's Board of Directors votes to take such action. That vote shall determine whether or not any portion or portions of a meeting or portions of a series of meetings may be

closed to public, observation for any of the reasons provided in §1500.5 and whether or not the public interest nevertheless requires that portion of the meeting or meetings remain open. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Board member participating in such vote shall be recorded, and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Foundation close such portion to the public for any of the reasons referred to in §1500.5 (a) (5), (6), or (7), the Foundation, upon request of any one of its Board members, shall take a recorded vote whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Foundation shall make publicly available a written copy of such vote, reflecting the vote of each member on the question, and a full written explanation of the action to close a portion of or the entire meeting, together with a list of persons expected to attend the meeting and their affiliations.

(c) For every closed meeting, the General Counsel of the Foundation shall publicly certify prior to a Board of Directors' vote on closing the meeting that, in his or her opinion, the meeting may be closed to the public, and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained by the Foundation.

§1500.8 Changing the time and place of, and reconsideration of opening or closing a meeting.

The time or place of a Board meeting may be changed following the public announcement only if the Foundation publicly announces such change at the earliest practicable time. The subject

matter of a meeting, or the determination of the Foundation to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Board of Directors determines by a recorded vote that Foundation business so requires and that no earlier announcement of the change was possible, and the Foundation publicly announces such change and the vote of each member upon change at the earliest practicable time.

§ 1500.9 Transcripts, recording of closed meetings.

(a) The Foundation shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public.

(b) The Foundation, after review by the General Counsel, shall make promptly available to the public in a place easily accessible to the public the transcript or electronic recording of the discussion of any item on the agenda, or any item of the testimony of any witness received at the Board meeting, except for such item or items of discussion or testimony as the Foundation determines to contain information which may be withheld under §1500.5. Copies of such transcript, or a transcription of such recording, disclosing the identify of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Foundation shall maintain a complete verbatim copy of the transcript or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Foundation proceeding with respect to which the meeting or portion was held, whichever occurs later.

PART 1501—ORGANIZATION

**SUBSTANTIVE RULE OF GENERAL
APPLICABILITY**

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1501.4 Availability of information pertaining to Foundation operations.

1501.5 Substantive rules of general applicability.

AUTHORITY: 22 U.S.C. 290h; 5 U.S.C. 552.

SOURCE: 50 FR 18861, May 3, 1985, unless otherwise noted.

SUBSTANTIVE RULE OF GENERAL APPLICABILITY

§ 1501.1 Introduction.

The regulations of this part are issued pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

§ 1501.2 Background.

(a) The African Development Foundation (“ADF”) is a wholly-owned corporation of the United States Government, created by the African Development Foundation Act (title V, Pub. L. 96–533, 94 Stat. 3151 (22 U.S.C. 290h)). It is a non-profit, non-stock issuing, tax-exempt corporation, and is subject to title I of the Government Corporation Control Act (31 U.S.C. 9101 *et seq.*).

(b) The primary function of ADF is to extend financial assistance in the form of grants, loans and loan guarantees to African private and public entities to support self-help activities at the local level in African countries, and to fund development research by Africans. Priority shall be given to projects which community groups undertake to foster their own development and which involve maximum feasible participation of the poor. The maximum assistance which may be extended for a single project is \$250,000.

§ 1501.3 Description of central organization and location of offices.

(a) The management of ADF is vested in a Board of Directors (hereinafter referred to as the “Board”) consisting of a Chairperson, a Vice Chairperson and five other members appointed by the President, by and with the advice and consent of the Senate. Five of the members are appointed from private life and two from among the officers and employees of agencies of the United States concerned with African affairs. The Board establishes policy for the Foundation and is responsible for its management.

(b) The Board is required to appoint a President of the Foundation upon such terms as it may determine. The President has responsibility for directing the day to day activities of the Foundation. He is assisted by a Vice President, a Congressional liaison officer, a Public Affairs officer, a General Counsel, and the following staff units:

(1) *Office of Administration and Finance.* This office is responsible for the management of the administrative, budgeting, financial and personnel activities of the Foundation.

(2) *Office of Research and Evaluation.* This office is responsible for evaluating, or assisting grantees to evaluate, ADF funded projects; for monitoring evaluations and analyses of grassroots projects conducted by other funding or research organizations; and for identifying and providing assistance to indigenous researchers in Africa working in development projects at the local level.

(3) *Office of Program and Field Operations.* This office is responsible for identifying, reviewing and monitoring projects funded by the Foundation.

(c) The Board is also required to establish an Advisory Council made up of individuals knowledgeable about development activities in Africa, and to consult with the Council at least once each year. The Council shall have not more than 25 members appointed for a period of two years with an option to be reappointed for an additional year.

(d) The Board of Directors and the aforementioned officers, together with the other employees of the Foundation, constitute the central organization of ADF, and are located and function at ADF headquarters, 1724 Massachusetts Avenue NW., Suite 200, Washington, DC 20036. It is anticipated that in the future a field organization will be established with offices in selected cities in Africa, but this has not yet occurred.

§ 1501.4 Availability of information pertaining to Foundation operations.

Rules of procedure and forms used for the funding of ADF projects may be obtained upon application to the Office of Program and Field Operations at ADF

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headquarters, 1724 Massachusetts Avenue NW., Suite 200, Washington, DC 20036.

§ 1501.5 Substantive rules of general applicability.

ADF's regulations published under the provisions of the Administrative Procedure Act are found in chapter XV of title 22 of the Code of Federal Regulations and the FEDERAL REGISTER. These regulations are supplemented from time to time by amendments appearing initially in the FEDERAL REGISTER.

PART 1502—AVAILABILITY OF RECORDS

Sec.

1502.1 Introduction.

1502.2 Definitions.

1502.3 Access to Foundation records.

1502.4 Written requests.

1502.5 Records available at the Foundation.

1502.6 Records of other departments and agencies.

1502.7 Fees.

1502.8 Exemptions.

1502.9 Processing of requests.

1502.10 Judicial review.

AUTHORITY: 5 U.S.C. 552 and 22 U.S.C. 290h-4.

SOURCE: 50 FR 28933, July 17, 1985, unless otherwise noted.

§ 1502.1 Introduction.

(a) It is the policy of the African Development Foundation that information about its operations, procedures, and records be freely available to the public in accordance with the provisions of the Freedom of Information Act.

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Act and the regulations in this part.

(c) The Director of Administration and Finance (A&F) shall be responsible for the Foundation's compliance with the processing requirements of the Freedom of Information Act.

§ 1502.2 Definitions.

As used in this part, the following words have the meanings set forth below:

(a) *Act* means the Act of June 5, 1967, sometimes referred to as the "Freedom of Information Act" or the Public Information Section of the Administrative Procedure Act, as amended, Pub. L. 90-23, 81 Stat. 54, codified at 5 U.S.C. 552.

(b) *Foundation* means the African Development Foundation.

(c) *President* means the President of the Foundation.

(d) *Record(s)* includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and other documents provided by the Foundation to the public in the normal course of doing business are not included within the definition of the word "records." The latter will continue to be made available to the public without charge.

§ 1502.3 Access to Foundation records.

Any person desiring to have access to Foundation records may call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices at 1724 Massachusetts Avenue, NW., Suite 200, Washington, DC 20036. Requests for access should be made to the Director of A&F, at the Foundation offices. If request is made for copies of any record, the Office of A&F will assist the person making such request in seeing that such copies are provided according to the rules in this part.

§ 1502.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

(a) Address his or her request to: Director, Administration and Finance Division, African Development Foundation, 1724 Massachusetts Avenue, NW., Suite 200, Washington, DC 20036.

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Both the envelope and the request itself should be clearly marked: "Freedom of Information Act Request."

(b) Identify the desired record by name, title, author, a brief description, or number, and date, as applicable. The identification should be specific enough so that a record can be identified and found without unreasonably burdening or disrupting the operations of the Foundation. Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted. If the Foundation determines that a request does not reasonably describe the records sought, the requestor shall be advised what additional information is needed or informed why the request is insufficient.

(c) Include a check or money order to the order of the "African Development Foundation" covering the appropriate search and copying fees, or a request for determination of the fee and a promise to pay any amount over \$3.00 in connection with the FOIA request.

§ 1502.5 Records available at the Foundation.

The Administration and Finance Division will make available for public inspection and copying, to the extent not authorized to be withheld, the following works or classes of information:

(a) A copy of Foundation regulations, including those published in title 22 of the Code of Federal Regulations or of any other title of the Code.

(b) Statements of policy and interpretations which have been adopted by the Foundation and which are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Any indexes providing identifying information regarding any record described in paragraphs (b) and (c) of this section.

(e) Brochures and other printed materials describing the Foundation's activities.

§ 1502.6 Records of other departments and agencies.

Requests for records which have been originated by, or are primarily the concerns of, another U.S. Department or Agency will be forwarded to the par-

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ticular department or agency involved, and the petitioner so notified. In response to requests for records or publications published by the Government Printing Office or other government printing activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments which accompanied the request.

§ 1502.7 Fees.

(a) *When charged.* Fees shall be charged in accordance with the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Foundation records under this sub-part unless the Director of A&F determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Fees shall also not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than \$3. Ordinarily, fees shall not be charged if the records requested are not found, or if located, are withheld as exempt.

(b) *Services charged for and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies \$.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing requested records, \$2.30.

(3) *Non-routine, non-clerical searches.* Where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, \$5.40. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) *Other charges.* When a response to a request requires services or materials other than those described in paragraphs (b) (1) through (3) of this section, the direct cost of such services to the Foundation may be charged, providing the requestor has been given an

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estimate of such cost before it is incurred.

(c) *Revision of schedule.* The fee schedule will be revised from time to time, without notice, to assure recovery of actual costs of rendering information services to any person. The revised schedule will be available without charge.

§ 1502.8 Exemptions.

The following categories are examples of records which, if maintained by the Foundation, may be exempted from disclosure under 5 U.S.C. 552(b):

(a) Records specifically required by executive order to be exempt from disclosure in the interest of the national defense or foreign policy which properly classified pursuant to such executive order;

(b) Records related solely to the internal personnel rules and practices of the Foundation;

(c) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), providing that such statute (1) requires that the matter be withheld from the public in such a manner as to leave no discretion, or (2) establishes criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from any person which is privileged or confidential;

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Foundation;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Investigatory files (including security investigation files and files concerning the conduct of employees) compiled for law enforcement purposes, except to the extent available by law to a private party.

The Foundation will not honor requests for exempt records or information.

§ 1502.9 Processing of requests.

(a) *Processing.* A person who has made a written request for records which meets the requirements of §1502.4 shall

be informed by the Director of A&F within ten working days of receipt of the Foundation's decision whether to deny or grant access to the records.

(b) *Denials.* If the Director of A&F, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 15 working days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within the time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision and of the right to a judicial review of the decision in the federal courts.

(c) *Extension of time.* Where it is reasonably necessary to the proper processing of requests, the time required to respond to an FOIA request or an appeal may be extended for an additional 10 working days upon written notification to the requestor providing the reasons for the extension.

§ 1502.10 Judicial review.

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B)).

PART 1503—OFFICIAL SEAL

Sec.

1503.1 Authority.

1503.2 Description.

1503.3 Custody and authorization to affix.

AUTHORITY: Pub. L. 95-533, 94 Stat. 3131 (22 U.S.C. 290h 4(2)(3)).

SOURCE: 50 FR 18634, May 2, 1985, unless otherwise noted.

§ 1503.1 Authority.

Pursuant to section 506(a)(3) of Pub. L. 96-533, the African Development

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Foundation official seal and design thereof, which accompanies and is made part of this document, is hereby adopted, approved, and judicially noticed.

§ 1503.2 Description.

The official seal of the African Development Foundation is described as follows:

(a) Forming an outer circle is a ring of type in dark blue capital letters

spelling the words “AFRICAN DEVELOPMENT FOUNDATION—UNITED STATES OF AMERICA;”

(b) Within that circle is an inner circle with the stylized letters ADF in dark blue superimposed on a light grey background.

(c) The official seal of the African Development Foundation when reproduced in black and white and when embossed, is as it appears below.



§ 1503.3 Custody and authorization to affix.

(a) The seal is the official emblem of the African Development Foundation and its use is therefore permitted only as provided in this part.

(b) The seal shall be kept in the custody of the General Counsel, or any other person he authorizes, and should be affixed by him, the Chairman of the Board of Directors, or the President of the African Development Foundation to authenticate records of the Foundation and for other official purposes. The General Counsel may redelegate

and authorize redelegation of this authority.

(c) The President of the African Development Foundation shall designate and prescribe by internal written delegation and policies the use of the seal for other publication and display purposes and those Foundation officials authorized to affix the seal for these purposes.

(d) Use by any person or organization outside of the Foundation may be made only with the Foundation's prior written approval. Such request must be made in writing to the General Counsel.

**PART 1504—EMPLOYEE
RESPONSIBILITIES AND CONDUCT**

AUTHORITY: 5 U.S.C. 7301.

SOURCE: 61 FR 6507, Feb. 21, 1996, unless otherwise noted.

§ 1504.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Directors and other employees of the African Development Foundation are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, and the executive branch financial disclosure regulations at 5 CFR part 2634.

**PART 1506—COLLECTION OF
CLAIMS**

Sec.

1506.1 Purpose.

1506.2 Applicability of Federal Claims Collection Standards.

1506.3 Subdivision of claims.

1506.4 Late payment, penalty and administrative charges.

1506.5 Demand for payment.

1506.6 Collection by offset.

1506.7 Disclosures to consumer reporting agencies and contracts with collection agencies.

AUTHORITY: 31 U.S.C. 3711, and 4 CFR parts 101 through 105.

SOURCE: 53 FR 5567, Feb. 25, 1988, unless otherwise noted.

§ 1506.1 Purpose.

These regulations prescribe the procedures to be used by the African Development Foundation (ADF) in the collection of claims owed to the African Development Foundation and to the United States.

§ 1506.2 Applicability of Federal Claims Collection Standards.

Except as otherwise provided by law, the African Development Foundation will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claim Collection Standards ("FCCS") of the General Accounting Office and Department of Justice, 4 CFR parts 101–105.

§ 1506.3 Subdivision of claims.

A debtor's liability arising from a particular contract or transaction shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

§ 1506.4 Late payment, penalty and administrative charges.

(a) Except as otherwise provided by statute, loan agreement or contract, the African Development Foundation will assess:

(1) *Late payment charges* (interest) on unpaid claims at the prompt payment interest rate established by the Secretary of the Treasury as the current value of funds to the United States Treasury.

(2) *Penalty charges* at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) *Administrative charges* to cover the costs of processing and calculating delinquent claims.

(b) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(c) *Waiver.* (1) Late payment charges are waived on any claim or any portion of a claim which is paid within 30 days after the date on which late payment charges begin to accrue.

(2) The 30 day period may be extended on a case-by-case basis if it is determined that an extension is appropriate.

(3) The African Development Foundation may waive late payment, penalty and administrative charges under the FCCS criteria for the compromise of claims (4 CFR part 103), or upon a determination that collection of the charges would be against equity and good conscience or not in the best interest of the United States, including for example:

(i) Pending consideration of a request for reconsideration, administrative review or waiver under a permissive statute,

(ii) If repayment of the full amount of the debt is made after the date upon which interest and other charges become payable and the estimated costs of recovering the residual balance exceeds the amount owed, or

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(iii) If collection of interest or other charges would jeopardize collection of the principal of the claim.

§ 1506.5 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

- (1) The basis for the claim;
- (2) The amount of the claim;
- (3) The date when payment is due, 30 days, from date of mailing or hand delivery of the initial demand for payment;
- (4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 1506.6 Collection by offset.

(a) Collection by administrative offset will be undertaken only on claims which are liquidated or certain in amount. Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on Foundation activities.

(b) The procedures for offset in this part do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

(c) Before offset is made, the Foundation will provide the debtor with written notice informing the debtor of:

- (1) The nature and amount of the claim;
- (2) The intent of the Foundation to collect by administrative offset, including asking the assistance of the other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy the records of the Foundation related to the claim;

(4) The right of the debtor to a review of the claim within the Foundation. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request to the billing office for a review of the claim within the Foundation by the payment due date stated in the notice. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If the African Development Foundation later sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response, by administrative offset, unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraph (c) (3), (4) or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) The African Development Foundation will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States." The African Development Foundation will provide instructions to the collecting agency for the transfer of funds.

(e) The African Development Foundation will promptly process requests for offset from other agencies and transfer funds to the requesting Foundation upon receipt of the written certification required by § 102.3 of the FCCS.

§ 1506.7 Disclosure to consumer reporting agencies and contracts with collection agencies.

(a) The African Development Foundation may disclose delinquent debts,

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other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(b) The African Development Foundation may enter into contracts with collection agencies in accordance with 31 U.S.C. 3718 and the FCCS.

PART 1507—RULES SAFEGUARDING PERSONAL INFORMATION

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- 1507.12 Criminal penalties.
- 1507.13 Reports.

AUTHORITY: 5 U.S.C. 522a.

SOURCE: 53 FR 40411, Oct. 17, 1988, unless otherwise noted.

§ 1507.1 Purpose.

The purpose of this part is to set forth the basic policies of the African Development Foundation ("the Foundation" or "ADF") governing the maintenance of systems of records containing personal information as defined in the Privacy Act of 1974 (5 U.S.C. 552a).

§ 1507.2 General policies.

It is the policy of the Foundation to safeguard the right of privacy of any individual as to whom the Foundation maintains personal information in any records system, and to provide such individuals with appropriate and complete access to such records, including adequate opportunity to correct any errors in said records. It is further the policy of the Foundation to maintain its records in such a fashion that the information contained therein is, and remains, material and relevant to the purposes for which it is collected. Information in such records will be collected, maintained, used or disseminated in a manner that assures that such action is for a necessary and lawful purpose, and that adequate safe-

guards are provided to prevent misuse of such information. Exemptions from records requirements provided in 5 U.S.C. 552a will be permitted only where an important public policy need for such exemptions has been determined pursuant to specific statutory authority.

§ 1507.3 Definitions.

(a) *Record* means any document, collection, or grouping of information about an individual maintained by the Foundation, including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or personal identification number, symbol, photograph, or other identifying particular assigned to such individual, such as a finger or voiceprint.

(b) *System of Records* means a group of any records under the control of the Foundation from which information is retrieved by use of the name of an individual or by some identifying particular assigned to the individual.

(c) *Routine Use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term *Foundation* means the African Development Foundation or any component thereof.

(e) The term *individual* means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term *maintain* includes the maintenance, collection, use or dissemination of any record.

(g) The term *Act* means the Privacy Act of 1974 (5 U.S.C. 552a) as amended from time to time.

§ 1507.4 Conditions of disclosure.

The Foundation will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request or prior written consent of the individual to whom the record pertains or his or her agent or attorney, unless such disclosure is:

(a) To those officers and employees of the Foundation who have a need for

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the records in the official performance of their duties;

(b) Required under the Freedom of Information Act (5 U.S.C. 552);

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to title 13, United States Code;

(e) To a recipient who has provided the Foundation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred to a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services, or designee, to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Foundation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person, pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if, promptly following such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(i) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any authorized representative, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction. If any record disclosed under compulsory legal proc-

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ess is subsequently made public by the court which issued it, the Foundation must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

(1) To consumer reporting agencies as defined in 31 U.S.C. 370(a)(3) in accordance with 31 U.S.C. 3711, and under contracts for collection services as authorized in 31 U.S.C. 3718.

§ 1507.5 Accounting for disclosure of records.

(a) With respect to each system of records under ADF control, the Foundation will keep an accurate accounting of routine disclosures, except those made to employees of the Foundation in the normal course of duties or pursuant to the provisions of the Freedom of Information Act. Such accounting shall contain the following:

(1) The date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Sufficient information to permit the construction of a listing of all disclosures at appropriate periodic intervals; and

(3) The justification or basis upon which any release was made including any written documentation required.

(b) The Foundation will retain the accounting made under this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosure made under paragraph (g) of § 1503.3, the Foundation will make the accounting under paragraph (a) of this section available to the individual named in the record at his or her request.

(d) The Foundation will inform any person or other agency about any correction or notation of dispute made by the agency of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1507.6 Access to records.

(a) Except as otherwise provided by law or regulation, any individual, upon request made either in writing or in person during regular business hours, shall be provided access to his or her

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record or to any information pertaining to him or her which is contained in a system of records maintained by the Foundation. The individual will be permitted to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(b) An individual will be notified, upon request, if any Foundation system of records contains a record pertaining to him or her. Such request may be made in person during regular business hours, or in writing over the signature of the person making the request. Individuals requesting the information will be required to identify themselves by providing their names, addresses, and a signature. If they are requesting disclosure in person, they are also required to show an identification card, such as a drivers license, containing a photo and a sample signature. If the request is received through the mail, the Foundation may request such information as may be necessary to assure that the requesting individual is properly identified. This may include a requirement that the request be notarized with a notation that the notary received an acknowledgement of identity from the requester.

(c) A record may be disclosed to a representative of the person to whom a record relates when the representative is authorized in writing by such person to have access.

(d) Requests for access to or copies of records should contain, at a minimum, identifying information needed to locate any given record, and a brief description of the item or items of information required. If the individual wishes access to specific documents, the request should identify or describe, as nearly as possible, such documents. The request should be made to the Director, Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue NW., Suite 600, Washington, DC 20036. Personal contacts should normally be made during the regular duty hours of the officer concerned, which are 8:30 a.m. to 5:00 p.m. Monday through Friday.

(e) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Foundation. Mail or personal requests for documents which are not in the immediate custody of ADF or which are otherwise not immediately available, will be acknowledged within ten working days of receipt, and the records will be provided as promptly thereafter as possible.

(f) Special procedures may be established by the President of the Foundation governing the disclosure to an individual of his or her medical records, including psychological records.

(g) Any individual may request the Director, Administration and Finance, to amend any Foundation record pertaining to him or her. Not later than 10 working days after the date of receipt of such request, the Director, Administration and Finance, or his/her designee, will acknowledge such receipt in writing. Promptly after acknowledging receipt of a request, the Director, Administration and Finance or his/her designee will:

(1) Correct any portion of the record which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the Foundation's refusal to amend the record in accordance with the request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the President of the Foundation, or his/her designee, and the name and address of such official; or

(3) Refer the request to the agency that has control of and maintains the record when the record requested is not the property of the Foundation, but of the controlling agency.

(h) Any individual who disagrees with the refusal of the Director, Administration and Finance to amend his or her record may request a review of that refusal. Such request for review must be made within 30 days after receipt by the requester of the initial refusal to amend. The President of the Foundation, or designee, will complete such review not later than 30 working days from the date on which the individual requests such review, and make a final determination, unless for good

cause shown, the President or designee extends such 30-day period and notifies the requester in writing that additional time is required to complete the review. If, after review, the President or designee refuses to amend the record in accordance with the request, the individual will be advised of the right to file with the Foundation a concise statement setting forth the reasons for his or her disagreement with the refusal, and also advised of the provisions in the Act for judicial review of the President's determination.

(i) In any disclosure containing information about which the individual has filed a statement under paragraph (g) of this section, the Foundation will clearly note any part of the record which is disputed and provide copies of the statement and, if the Foundation deems it appropriate, copies of a concise statement of the Foundation's reasons for not making the amendment requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 1507.7 Contents of records systems.

(a) The Foundation will maintain in its records only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which it was acquired as authorized by statute or Executive Order.

(b) The Foundation will collect information, to the greatest extent practicable, directly from the individual to whom the record pertains when the information may result in adverse determinations about the individual's rights, benefits and privileges under Federal programs.

(c) The Foundation will inform each individual whom it asks to supply information on any form which it uses to collect the information, or on a separate form that can be retained by the individual, of:

(1) The authority which authorizes the solicitation of the information and whether provision of such information is mandatory or voluntary;

(2) The purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published

pursuant to paragraph (d) of this section; and

(4) The effects on the individual, if any, of not providing all or any part of the requested information.

(d) Subject to the provisions of paragraph (k) of this section, the Foundation will publish in the FEDERAL REGISTER, at least a notice of the existence and character of its system(s) of records upon establishment or revision. This notice will include:

(1) The name and location of the system or systems;

(2) The categories of individuals on whom records are maintained in the system or systems;

(3) The categories of records maintained in the system or systems;

(4) Each routine use of the records contained in the system or systems, including the categories of users, and the purpose of such use;

(5) The policies and practices of the Foundation regarding storage, retrievability, access controls, retention, and disposal of the record;

(6) The title and business address of the Foundation official or officials responsible for the system or systems of records;

(7) The Foundation's procedures whereby an individual can be notified at his or her request if the system or systems of records contains a record pertaining to him or her;

(8) The Foundation's procedures whereby an individual can be notified at him or her request how he or she can gain access to any record pertaining to him or her contained in the system or systems of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system or systems.

(e) All records used by the Foundation in making any determination about any individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(f) Before disseminating any record about an individual to any person other than an agency or pursuant to 5 U.S.C. 552, the Foundation will make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Foundation purposes.

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(g) The Foundation will maintain no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to, and within the scope of, an authorized law enforcement activity.

(h) The Foundation will establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record. Each such person will be instructed regarding such rules and the requirements of 5 U.S.C. 552a. The instruction will include any other rules and procedures adopted pursuant to 5 U.S.C. 552a, and the penalties provided for noncompliance.

(i) The Foundation will establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(j) At least 30 days prior to the publication of the notice in the FEDERAL REGISTER regarding the routine use of the records contained in the Foundation's system or systems of records, including the categories of users and the purpose of such use pursuant to paragraph (d) of this section, the Foundation will also:

(1) Publish a notice in the FEDERAL REGISTER of any new or revised use of the information in the system or systems maintained by the Foundation; and

(2) Provide an opportunity for interested persons to submit written data, views, or arguments to the Foundation.

§ 1507.8 Fees.

Fees to be charged, if any, to any individual for making copies of his or her record will be as follows:

(a) Photocopy reproductions from all types of copying processes, each reproduction image, \$0.10 per page.

(b) Where the Foundation undertakes to perform for an individual making a request, or for any other person, services which are very clearly not required to be performed under section 552a, title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Foundation, etc.), the question of charging fees for such services will be determined by the Director of Administration and Finance, in light of the Federal user charge statute (31 U.S.C. 483a), and any other applicable law.

(c) No fees shall be charged for search time expended by the Foundation to produce a record.

§ 1507.9 Judicial review.

Any person may file a complaint against the Foundation in the appropriate U.S. district court, as provided in 5 U.S.C. 552a(g), whenever the Foundation:

(a) Makes a determination not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section; or

(b) Refuses to comply with an individual's request; or

(c) Fails to maintain any record concerning an individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply with any other provision of 5 U.S.C. 552a, or any Foundation regulation promulgated thereunder, in any such a way as to have an adverse effect on an individual.

§ 1507.10 Exemptions.

No Foundation system or systems of records, as such, are exempted from the provisions of 5 U.S.C. 552a, as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

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§ 1507.11 Mailing list.

An individual's name and address may not be sold or rented by the Foundation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

§ 1507.12 Criminal penalties.

Section 552a(e), title 5, United States Code, provides that:

(a) Any officer or employee of the Foundation, who, by virtue of his or her employment or official position, has possession of, or access to, Foundation records which contain individually identifiable information, the disclosure of which is prohibited by 5 U.S.C. 552a, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(b) Any officer or employee of the Foundation who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Foundation under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

§ 1507.13 Reports.

(a) The Foundation shall provide to Congress and the Office of Management and Budget advance notice of any proposal to establish or alter any system or records as defined herein. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

(b) If at any time Foundation system or systems of records is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the records contained in such system or systems will be separately listed and reported to the Office of Management and Budget in accordance with the

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then prevailing guidelines and instructions of that office.

PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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1508.1010 Suspending official.
1508.1015 Suspension.
1508.1020 Voluntary exclusion or voluntarily excluded.

Subpart J [Reserved]

APPENDIX TO PART 1508—COVERED TRANSACTIONS

AUTHORITY: Sec. 2455, Pub.L. 103–355, 108 Stat. 3327; E.O. 12549, 3CFR, 1986 Comp., p.89; E.O. 12689, 3CFR, 1989 Comp., p. 235.

SOURCE: 68 FR 66590, 66592, Nov. 26, 2003, unless otherwise noted.

§ 1508.25 How is this part organized?

(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

In subpart . . .	You will find provisions related to . . .
A	general information about this rule.
B	the types of ADF transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.
C	the responsibilities of persons who participate in covered transactions.
D	the responsibilities of ADF officials who are authorized to enter into covered transactions.

In subpart . . .	You will find provisions related to . . .
E	the responsibilities of Federal agencies for the <i>Excluded Parties List System</i> (Disseminated by the General Services Administration).
F	the general principles governing suspension, debarment, voluntary exclusion and settlement.
G	suspension actions.
H	debarment actions.
I	definitions of terms used in this part.
J	[Reserved]

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

If you are . . .	See subpart(s) . . .
(1) a participant or principal in a non-procurement transaction.	A, B, C, and I.
(2) a respondent in a suspension action	A, B, F, G and I.
(3) a respondent in a debarment action	A, B, F, H and I.
(4) a suspending official	A, B, D, E, F, G and I.
(5) a debarring official	A, B, D, E, F, H and I.
(6) a (n) ADF official authorized to enter into a covered transaction.	A, B, D, E and I.
(7) Reserved	J.

§ 1508.50 How is this part written?

(a) This part uses a “plain language” format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.

(b) Pronouns used within this part, such as “I” and “you,” change from subpart to subpart depending on the audience being addressed. The pronoun “we” always is the African Development Foundation.

(c) The “Covered Transactions” diagram in the appendix to this part shows the levels or “tiers” at which the African Development Foundation enforces an exclusion under this part.

§ 1508.75 Do terms in this part have special meanings?

This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are—

(a) *Exclusion or excluded*, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);

(b) *Disqualification or disqualified*, which refers to prohibitions under spe-

cific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and

(c) *Ineligibility or ineligible*, which generally refers to a person who is either excluded or disqualified.

Subpart A—General

§ 1508.100 What does this part do?

This part adopts a governmentwide system of debarment and suspension for ADF nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689, “Debarment and Suspension” (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1508.105 Does this part apply to me?

Portions of this part (see table at § 1508.25(b)) apply to you if you are a(n)—

(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;

(b) Respondent (a person against whom the African Development Foundation has initiated a debarment or suspension action);

(c) ADF debarring or suspending official; or

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(d) ADF official who is authorized to enter into covered transactions with non-Federal parties.

§ 1508.110 What is the purpose of the nonprocurement debarment and suspension system?

(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.

(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.

(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 1508.115 How does an exclusion restrict a person's involvement in covered transactions?

With the exceptions stated in §§ 1508.120, 1508.315, and 1508.420, a person who is excluded by the African Development Foundation or any other Federal agency may not:

(a) Be a participant in a(n) ADF transaction that is a covered transaction under subpart B of this part;

(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or

(c) Act as a principal of a person participating in one of those covered transactions.

§ 1508.120 May we grant an exception to let an excluded person participate in a covered transaction?

(a) The ADF President may grant an exception permitting an excluded person to participate in a particular covered transaction. If the ADF President grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.

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§ 1508.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?

If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.

§ 1508.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?

If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.

§ 1508.135 May the African Development Foundation exclude a person who is not currently participating in a nonprocurement transaction?

Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.

§ 1508.140 How do I know if a person is excluded?

Check the *Excluded Parties List System (EPLS)* to determine whether a person is excluded. The General Services Administration (GSA) maintains the *EPLS* and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 1508.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

Except if provided for in Subpart J of this part, this part—

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(a) Addresses disqualified persons only to—

(1) Provide for their inclusion in the *EPLS*; and

(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the—

(1) ADF transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

Subpart B—Covered Transactions

§ 1508.200 What is a covered transaction?

A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at—

(a) The primary tier, between a Federal agency and a person (see appendix to this part); or

(b) A lower tier, between a participant in a covered transaction and another person.

§ 1508.205 Why is it important if a particular transaction is a covered transaction?

The importance of a covered transaction depends upon who you are.

(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.

(b) As a Federal official who enters into a primary tier transaction, you

have the responsibilities laid out in subpart D of this part.

(c) As an excluded person, you may not be a participant or principal in the transaction unless—

(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 1508.310 or § 1508.415; or

(2) A(n) ADF official obtains an exception from the ADF President to allow you to be involved in the transaction, as permitted under § 1508.120.

§ 1508.210 Which nonprocurement transactions are covered transactions?

All nonprocurement transactions, as defined in § 1508.970, are covered transactions unless listed in § 1508.215. (See appendix to this part.)

§ 1508.215 Which nonprocurement transactions are not covered transactions?

The following types of nonprocurement transactions are not covered transactions:

(a) A direct award to—

(1) A foreign government or foreign governmental entity;

(2) A public international organization;

(3) An entity owned (in whole or in part) or controlled by a foreign government; or

(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 *et seq.*, those benefits are not covered transactions and, therefore, are not affected if the person is excluded.

(c) Federal employment.

(d) A transaction that the African Development Foundation needs to respond to a national or agency-recognized emergency or disaster.

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(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the African Development Foundation specifically designates it to be a covered transaction.

(f) An incidental benefit that results from ordinary governmental operations.

(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.

§ 1508.220 Are any procurement contracts included as covered transactions?

(a) Covered transactions under this part—

(1) Do not include any procurement contracts awarded directly by a Federal agency; but

(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).

(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:

(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 1508.210, and the amount of the contract is expected to equal or exceed \$25,000.

(2) The contract requires the consent of a(n) ADF official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

§ 1508.225 How do I know if a transaction in which I may participate is a covered transaction?

As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

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Subpart C—Responsibilities of Participants Regarding Transactions

DOING BUSINESS WITH OTHER PERSONS

§ 1508.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

(a) Checking the *EPLS*; or

(b) Collecting a certification from that person if allowed by this rule; or

(c) Adding a clause or condition to the covered transaction with that person.

§ 1508.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the African Development Foundation grants an exception under § 1508.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.

§ 1508.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the African Development Foundation grants an exception under § 1508.120.

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§ 1508.315 May I use the services of an excluded person as a principal under a covered transaction?

(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the African Development Foundation grants an exception under § 1508.120.

§ 1508.320 Must I verify that principals of my covered transactions are eligible to participate?

Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the *EPLS*.

§ 1508.325 What happens if I do business with an excluded person in a covered transaction?

If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

§ 1508.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to—

(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 1508.440 requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person with

whom the participant enters into a covered transaction at the next lower tier.

DISCLOSING INFORMATION—PRIMARY TIER PARTICIPANTS

§ 1508.335 What information must I provide before entering into a covered transaction with the African Development Foundation?

Before you enter into a covered transaction at the primary tier, you as the participant must notify the ADF office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:

(a) Are presently excluded or disqualified;

(b) Have been convicted within the preceding three years of any of the offenses listed in § 1508.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;

(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 1508.800(a); or

(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.

§ 1508.340 If I disclose unfavorable information required under § 1508.335, will I be prevented from participating in the transaction?

As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 1508.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.

§ 1508.345 What happens if I fail to disclose information required under § 1508.335?

If we later determine that you failed to disclose information under § 1508.335 that you knew at the time you entered into the covered transaction, we may—

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(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 1508.350 What must I do if I learn of information required under § 1508.335 after entering into a covered transaction with the African Development Foundation?

At any time after you enter into a covered transaction, you must give immediate written notice to the ADF office with which you entered into the transaction if you learn either that—

(a) You failed to disclose information earlier, as required by § 1508.335; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 1508.335.

DISCLOSING INFORMATION—LOWER TIER PARTICIPANTS

§ 1508.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?

Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.

§ 1508.360 What happens if I fail to disclose the information required under § 1508.355?

If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.

§ 1508.365 What must I do if I learn of information required under § 1508.355 after entering into a covered transaction with a higher tier participant?

At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that—

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(a) You failed to disclose information earlier, as required by § 1508.355; or

(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 1508.355.

Subpart D—Responsibilities of ADF Officials Regarding Transactions

§ 1508.400 May I enter into a transaction with an excluded or disqualified person?

(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 1508.120.

(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 1508.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?

As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 1508.120.

§ 1508.410 May I approve a participant's use of the services of an excluded person?

After entering into a covered transaction with a participant, you as an agency official may not approve a participant's use of an excluded person as a principal under that transaction, unless you obtain an exception under § 1508.120.

§ 1508.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision

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about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 1508.120.

§ 1508.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

If a transaction at a lower tier is subject to your approval, you as an agency official may not approve—

(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 1508.120; or

(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 1508.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

(a) Enter into a primary tier covered transaction;

(b) Approve a principal in a primary tier covered transaction;

(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

§ 1508.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

(a) You as an agency official must check the *EPLS* when you take any action listed in § 1508.425.

(b) You must review information that a participant gives you, as required by § 1508.335, about its status or the status of the principals of a transaction.

§ 1508.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

(a) Comply with subpart C of this part as a condition of participation in the transaction; and

(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 1508.440 What method do I use to communicate those requirements to participants?

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participant's compliance with subpart C of this part, and requiring them to include a similar term or condition in lower tier covered transactions.

§ 1508.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

§ 1508.450 What action may I take if a primary tier participant fails to disclose the information required under § 1508.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 1508.335, at the time it entered into a covered transaction with you, you may—

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or

(b) Pursue any other available remedies, including suspension and debarment.

§ 1508.455 What may I do if a lower tier participant fails to disclose the information required under § 1508.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 1508.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

Subpart E—Excluded Parties List System

§ 1508.500 What is the purpose of the Excluded Parties List System (EPLS)?

The *EPLS* is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

§ 1508.505 Who uses the EPLS?

(a) Federal agency officials use the *EPLS* to determine whether to enter into a transaction with a person, as required under § 1508.430.

(b) Participants also may, but are not required to, use the *EPLS* to determine if—

(1) Principals of their transactions are excluded or disqualified, as required under § 1508.320; or

(2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.

(c) The *EPLS* is available to the general public.

§ 1508.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the *EPLS*. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the *EPLS*.

§ 1508.515 What specific information is in the EPLS?

(a) At a minimum, the *EPLS* indicates—

(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for the action;

(6) The agency and name and telephone number of the agency point of contact for the action; and

(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.

(b)(1) The database for the *EPLS* includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.

(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

§ 1508.520 Who places the information into the EPLS?

Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the *EPLS*:

(a) Information required by § 1508.515(a);

(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;

(c) Information about an excluded or disqualified person, generally within five working days, after—

(1) Taking an exclusion action;

(2) Modifying or rescinding an exclusion action;

(3) Finding that a person is disqualified; or

(4) Finding that there has been a change in the status of a person who is listed as disqualified.

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§ 1508.525 Whom do I ask if I have questions about a person in the EPLS?

If you have questions about a person in the *EPLS*, ask the point of contact for the Federal agency that placed the person's name into the *EPLS*. You may find the agency point of contact from the *EPLS*.

§ 1508.530 Where can I find the EPLS?

(a) You may access the *EPLS* through the Internet, currently at <http://epls.arnet.gov>.

(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of

Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

Subpart F—General Principles Relating to Suspension and Debarment Actions

§ 1508.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.

§ 1508.605 How does suspension differ from debarment?

Suspension differs from debarment in that—

A suspending official . . .	A debarring official . . .
(a) Imposes suspension as a temporary status of ineligibility for procurement and nonprocurement transactions, pending completion of an investigation or legal proceedings.	Imposes debarment for a specified period as a final determination that a person is not presently responsible.
(b) Must— (1) Have <i>adequate evidence</i> that there may be a cause for debarment of a person; and (2) Conclude that <i>immediate action</i> is necessary to protect the Federal interest.	Must conclude, based on a <i>preponderance of the evidence</i> , that the person has engaged in conduct that warrants debarment.
(c) Usually imposes the suspension <i>first</i> , and then promptly notifies the suspended person, giving the person an opportunity to contest the suspension and have it lifted.	Imposes debarment <i>after</i> giving the respondent notice of the action and an opportunity to contest the proposed debarment.

§ 1508.610 What procedures does the African Development Foundation use in suspension and debarment actions?

In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.

(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.

(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

§ 1508.615 How does the African Development Foundation notify a person of a suspension or debarment action?

(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of—

- (1) You or your identified counsel; or
- (2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.

(b) The notice is effective if sent to any of these persons.

§ 1508.620 Do Federal agencies coordinate suspension and debarment actions?

Yes, when more than one Federal agency has an interest in a suspension

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or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

§ 1508.625 What is the scope of a suspension or debarment?

If you are suspended or debarred, the suspension or debarment is effective as follows:

(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited—

(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or

(2) To specific types of transactions.

(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official—

(1) Officially names the affiliate in the notice; and

(2) Gives the affiliate an opportunity to contest the action.

§ 1508.630 May the African Development Foundation impute conduct of one person to another?

For purposes of actions taken under this rule, we may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

(b) *Conduct imputed from an organization to an individual, or between individuals.* We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or

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from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.

§ 1508.635 May the African Development Foundation settle a debarment or suspension action?

Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.

§ 1508.640 May a settlement include a voluntary exclusion?

Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 1508.645 Do other Federal agencies know if the African Development Foundation agrees to a voluntary exclusion?

(a) Yes, we enter information regarding a voluntary exclusion into the *EPLS*.

(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.

Subpart G—Suspension

§ 1508.700 When may the suspending official issue a suspension?

Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that—

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(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under §1508.800(a), or

(b) There exists adequate evidence to suspect any other cause for debarment listed under §1508.800(b) through (d); and

(c) Immediate action is necessary to protect the public interest.

§ 1508.705 What does the suspending official consider in issuing a suspension?

(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.

(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.

(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of the circumstances giving rise to a cause for suspension or from potential business relationships or involvement with a program of the Federal Government.

§ 1508.710 When does a suspension take effect?

A suspension is effective when the suspending official signs the decision to suspend.

§ 1508.715 What notice does the suspending official give me if I am suspended?

After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you—

(a) That you have been suspended;

(b) That your suspension is based on—

(1) An indictment;

(2) A conviction;

(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or

(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;

(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) upon which we relied under §1508.700 for imposing suspension;

(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;

(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other ADF procedures governing suspension decision making; and

(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.

§ 1508.720 How may I contest a suspension?

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 1508.725 How much time do I have to contest a suspension?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you—

(1) When delivered, if we mail the notice to the last known street address,

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or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 1508.730 What information must I provide to the suspending official if I contest a suspension?

(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the African Development Foundation may seek further criminal, civil or administrative action against you, as appropriate.

§ 1508.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that—

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not

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material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

§ 1508.740 Are suspension proceedings formal?

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

§ 1508.745 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the African Development Foundation agree to waive it in advance. If you want a copy

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of the transcribed record, you may purchase it.

§ 1508.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?

(a) The suspending official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the suspending official's initial decision to suspend you;

(2) Any further information and argument presented in support of, or opposition to, the suspension; and

(3) Any transcribed record of fact-finding proceedings.

(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 1508.755 When will I know whether the suspension is continued or terminated?

The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.

§ 1508.760 How long may my suspension last?

(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.

(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initi-

ating proceedings under paragraph (a) of this section.

(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.

Subpart H—Debarment

§ 1508.800 What are the causes for debarment?

We may debar a person for—

(a) Conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant

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to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 1508.120;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 1508.640 or of any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

§ 1508.805 What notice does the debarring official give me if I am proposed for debarment?

After consideration of the causes in § 1508.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 1508.615, advising you—

(a) That the debarring official is considering debarring you;

(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;

(c) Of the cause(s) under § 1508.800 upon which the debarring official relied for proposing your debarment;

(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other ADF procedures governing debarment; and

(e) Of the governmentwide effect of a debarment from procurement and non-procurement programs and activities.

§ 1508.810 When does a debarment take effect?

A debarment is not effective until the debarring official issues a decision.

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The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

§ 1508.815 How may I contest a proposed debarment?

If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

§ 1508.820 How much time do I have to contest a proposed debarment?

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.

(b) We consider the Notice of Proposed Debarment to be received by you—

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

§ 1508.825 What information must I provide to the debarring official if I contest a proposed debarment?

(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify—

(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 1508.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;

(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local

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agencies, including administrative agreements that affect only those agencies;

(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and

(4) All of your affiliates.

(b) If you fail to disclose this information, or provide false information, the African Development Foundation may seek further criminal, civil or administrative action against you, as appropriate.

§ 1508.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that—

(1) Your debarment is based upon a conviction or civil judgment;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or

(3) The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that—

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

§ 1508.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an offi-

cial record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

§ 1508.840 How is fact-finding conducted?

(a) If fact-finding is conducted—

(1) You may present witnesses and other evidence, and confront any witness presented; and

(2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the African Development Foundation agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

§ 1508.845 What does the debarring official consider in deciding whether to debar me?

(a) The debarring official may debar you for any of the causes in §1508.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at §1508.860.

(b) The debarring official bases the decision on all information contained in the official record. The record includes—

(1) All information in support of the debarring official's proposed debarment;

(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and

(3) Any transcribed record of fact-finding proceedings.

(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 1508.850 What is the standard of proof in a debarment action?

(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.

(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 1508.855 Who has the burden of proof in a debarment action?

(a) We have the burden to prove that a cause for debarment exists.

(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 1508.860 What factors may influence the debarring official's decision?

This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.

(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to

one or more of the causes for debarment specified in this part.

(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.

(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.

(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.

(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.

(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.

(j) Whether the wrongdoing was pervasive within your organization.

(k) The kind of positions held by the individuals involved in the wrongdoing.

(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(m) Whether your principals tolerated the offense.

(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(q) Whether you have taken appropriate disciplinary action against the

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individuals responsible for the activity which constitutes the cause for debarment.

(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.

(s) Other factors that are appropriate to the circumstances of a particular case.

§ 1508.865 How long may my debarment last?

(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.

(b) In determining the period of debarment, the debarring official may consider the factors in §1508.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.

(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 1508.870 When do I know if the debarring official debars me?

(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.

(b) The debarring official sends you written notice, pursuant to §1508.615 that the official decided, either—

(1) Not to debar you; or

(2) To debar you. In this event, the notice:

(i) Refers to the Notice of Proposed Debarment;

(ii) Specifies the reasons for your debarment;

(iii) States the period of your debarment, including the effective dates; and

(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the

Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 1508.875 May I ask the debarring official to reconsider a decision to debar me?

Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.

§ 1508.880 What factors may influence the debarring official during reconsideration?

The debarring official may reduce or terminate your debarment based on—

(a) Newly discovered material evidence;

(b) A reversal of the conviction or civil judgment upon which your debarment was based;

(c) A bona fide change in ownership or management;

(d) Elimination of other causes for which the debarment was imposed; or

(e) Other reasons the debarring official finds appropriate.

§ 1508.885 May the debarring official extend a debarment?

(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.

(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.

(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.

Subpart I—Definitions

§ 1508.900 Adequate evidence.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

§ 1508.905 Affiliate.

Persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to—

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

§ 1508.910 Agency.

Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered “agencies” for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.

§ 1508.915 Agent or representative.

Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.

§ 1508.920 Civil judgment.

Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).

§ 1508.925 Conviction.

Conviction means—

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

§ 1508.930 Debarment.

Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.

§ 1508.935 Debarring official.

- (a) *Debarring official* means an agency official who is authorized to impose debarment. A debarring official is either—
 - (1) The agency head; or
 - (2) An official designated by the agency head.
- (b) [Reserved]

§ 1508.940 Disqualified.

Disqualified means that a person is prohibited from participating in specified Federal procurement or non-procurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under—

- (a) The Davis-Bacon Act (40 U.S.C. 276(a));
- (b) The equal employment opportunity acts and Executive orders; or
- (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

§ 1508.945 Excluded or exclusion.

Excluded or exclusion means—

- (a) That a person or commodity is prohibited from being a participant in

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covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or

(b) The act of excluding a person.

§ 1508.950 Excluded Parties List System

Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The *EPLS* system includes the printed version entitled, "List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs," so long as published.

§ 1508.955 Indictment.

Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

§ 1508.960 Ineligible or ineligibility.

Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

§ 1508.965 Legal proceedings.

Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

§ 1508.970 Nonprocurement transaction.

(a) *Nonprocurement transaction* means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:

- (1) Grants.
- (2) Cooperative agreements.
- (3) Scholarships.
- (4) Fellowships.
- (5) Contracts of assistance.
- (6) Loans.
- (7) Loan guarantees.
- (8) Subsidies.

(9) Insurances.

(10) Payments for specified uses.

(11) Donation agreements.

(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.

§ 1508.975 Notice.

Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 1508.615.)

§ 1508.980 Participant.

Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.

§ 1508.985 Person.

Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.

§ 1508.990 Preponderance of the evidence.

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

§ 1508.995 Principal.

Principal means—

(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or

(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who—

(1) Is in a position to handle Federal funds;

(2) Is in a position to influence or control the use of those funds; or,

(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

§ 1508.1000 Respondent.

Respondent means a person against whom an agency has initiated a debarment or suspension action.

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§ 1508.1005 State.

- (a) *State* means—
- (1) Any of the states of the United States;
 - (2) The District of Columbia;
 - (3) The Commonwealth of Puerto Rico;
 - (4) Any territory or possession of the United States; or
 - (5) Any agency or instrumentality of a state.
- (b) For purposes of this part, *State* does not include institutions of higher education, hospitals, or units of local government.

§ 1508.1010 Suspending official.

- (a) *Suspending official* means an agency official who is authorized to impose suspension. The suspending official is either:
- (1) The agency head; or
 - (2) An official designated by the agency head.
- (b) [Reserved]

§ 1508.1015 Suspension.

Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

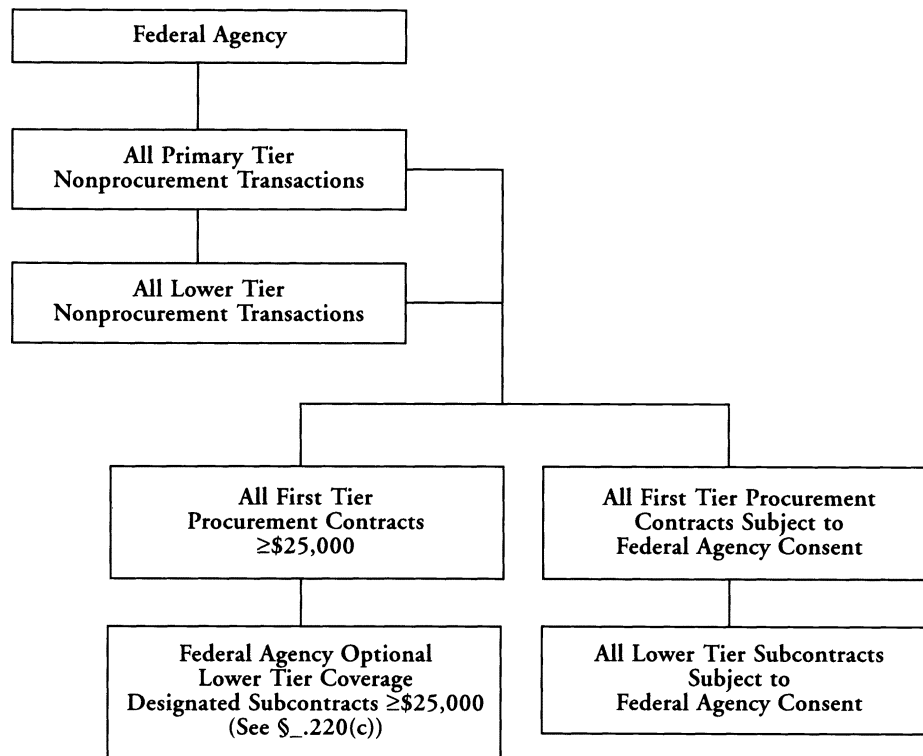
§ 1508.1020 Voluntary exclusion or voluntarily excluded.

- (a) *Voluntary exclusion* means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.
- (b) *Voluntarily excluded* means the status of a person who has agreed to a voluntary exclusion.

Subpart J [Reserved]

APPENDIX TO PART 1508—COVERED TRANSACTIONS

COVERED TRANSACTIONS

**PART 1509—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)****Subpart A—Purpose and Coverage**

Sec.

1509.100 What does this part do?

1509.105 Does this part apply to me?

1509.110 Are any of my Federal assistance awards exempt from this part?

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1509.210 To whom must I distribute my drug-free workplace statement?

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1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

1509.230 How and when must I identify workplaces?

Subpart C—Requirements for Recipients Who Are Individuals

1509.300 What must I do to comply with this part if I am an individual recipient?

1509.301 [Reserved]

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Subpart D—Responsibilities of ADF Awarding Officials

1509.400 What are my responsibilities as an ADF awarding official?

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1509.500 How are violations of this part determined for recipients other than individuals?

1509.505 How are violations of this part determined for recipients who are individuals?

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1509.640 Employee.
1509.645 Federal agency or agency.
1509.650 Grant.
1509.655 Individual.
1509.660 Recipient.

If you are . . .

(1) A recipient who is not an individual
(2) A recipient who is an individual
(3) A(n) ADF awarding official

1509.665 State.
1509.670 Suspension.

AUTHORITY: 41 U.S.C. 701 *et seq.*

SOURCE: 68 FR 66592, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 1509.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 1509.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the African Development Foundation; or

(2) A(n) ADF awarding official. (See definitions of award and recipient in §§1509.605 and 1509.660, respectively.)

(b) The following table shows the subparts that apply to you:

see subparts . . .

A, B and E.
A, C and E.
A, D and E.

§ 1509.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the ADF President determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

§ 1509.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in §1509.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to

Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

Subpart B—Requirements for Recipients Other Than Individuals

§ 1509.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must

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take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to—

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§1509.205 through 1509.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see §1509.225).

(b) Second, you must identify all known workplaces under your Federal awards (see §1509.230).

§ 1509.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

If . . .	then you . . .
(a) The performance period of the award is less than 30 days	must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.
(b) The performance period of the award is 30 days or more ...	must have the policy statement and program in place within 30 days after award.
(c) You believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program.	may ask the ADF awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official.

§ 1509.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs

§ 1509.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in §1509.205 be given to each employee who will be engaged in the performance of any Federal award.

§ 1509.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about—

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

§ 1509.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in §1509.205 and an ongoing awareness program as described in §1509.215, you must publish the statement and establish the program by the time given in the following table:

you about a conviction, as required by §1509.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

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(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

§ 1509.230 How and when must I identify workplaces?

(a) You must identify all known workplaces under each ADF award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces—

(1) To the ADF official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by ADF officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (*e.g.*, all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the ADF awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the

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award, you must inform the ADF awarding official.

Subpart C—Requirements for Recipients Who Are Individuals

§ 1509.300 What must I do to comply with this part if I am an individual recipient?

As a condition of receiving a(n) ADF award, if you are an individual recipient, you must agree that—

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing.

(2) Within 10 calendar days of the conviction.

(3) To the ADF awarding official or other designee for each award that you currently have, unless § 1509.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

§ 1509.301 [Reserved]

Subpart D—Responsibilities of ADF Awarding Officials

§ 1509.400 What are my responsibilities as a(n) ADF awarding official?

As a(n) ADF awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in—

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

Subpart E—Violations of this Part and Consequences

§ 1509.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of

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this part if the ADF President determines, in writing, that—

(a) The recipient has violated the requirements of subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

§ 1509.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the ADF President determines, in writing, that—

(a) The recipient has violated the requirements of subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

§ 1509.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 1509.500 or § 1509.505, the African Development Foundation may take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 22 CFR part 1508, for a period not to exceed five years.

§ 1509.515 Are there any exceptions to those actions?

The ADF President may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the ADF President determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

Subpart F—Definitions

§ 1509.605 Award.

Award means an award of financial assistance by the African Development Foundation or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule [Agency-specific CFR citation] that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable for ADF.

§ 1509.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

§ 1509.615 Conviction.

Conviction means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 1509.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in

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§ 1509.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 1509.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 1509.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689.

§ 1509.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

§ 1509.640 Employee.

(a) *Employee* means the employee of a recipient directly engaged in the performance of work under the award, including—

- (1) All direct charge employees;
- (2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and
- (3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the re-

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cipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).

§ 1509.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

§ 1509.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship—

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

§ 1509.655 Individual.

Individual means a natural person.

§ 1509.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.

§ 1509.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1509.670 Suspension.

Suspension means an action taken by a Federal agency that immediately

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prohibits a recipient from participating in Federal Government procurement contracts and covered non-procurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Non-procurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

PART 1510—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE AFRICAN DEVELOPMENT FOUNDATION

Sec.	
1510.101	Purpose.
1510.102	Application.
1510.103	Definitions.
1510.104–1510.109	[Reserved]
1510.110	Self-evaluation.
1510.111	Notice.
1510.112–1510.129	[Reserved]
1510.130	General prohibitions against discrimination.
1510.131–1510.139	[Reserved]
1510.140	Employment.
1510.141–1510.148	[Reserved]
1510.149	Program accessibility: Discrimination prohibited.
1510.150	Program accessibility: Existing facilities.
1510.151	Program accessibility: New construction and alterations.
1510.152–1510.159	[Reserved]
1510.160	Communications.
1510.161–1510.169	[Reserved]
1510.170	Compliance procedures.
1510.171–1510.999	[Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25883, 25885, July 8, 1988, unless otherwise noted.

§ 1510.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section

504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1510.102 Application.

This regulation (§§1510.101–1510.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1510.103 Definitions.

For purposes of this regulation, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 1510.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished

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materials, design quality, or special character resulting from a permanent alteration.

§§ 1510.104–1510.109 [Reserved]

§ 1510.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1510.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 1510.112–1510.129 [Reserved]

§ 1510.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

§§ 1510.131–1510.139

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1510.131–1510.139 [Reserved]

§ 1510.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity

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Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1510.141–1510.148 [Reserved]

§ 1510.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1510.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1510.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1510.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for

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reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General*. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs*. In meeting the requirements of § 1510.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 1510.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that

cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance*. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan*. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 1510.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607,

§§ 1510.152–1510.159

apply to buildings covered by this section.

§§ 1510.152–1510.159 [Reserved]

§ 1510.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving

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that compliance with §1510.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1510.161–1510.169 [Reserved]

§ 1510.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Personnel Officer, Office of Administration and Finance, shall be responsible for coordinating implementation of this section. Complaints may be sent to Personnel Officer, Office of Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

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(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1510.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 25883, 25885, July 8, 1988, as amended at 53 FR 25883, July 8, 1988]

§§ 1510.171–1510.999 [Reserved]

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